

PUBLIC REPORT OF THE MARKET CONDUCT EXAMINATION  
OF THE CLAIMS PRACTICES OF THE  
**KEMPER AUTO & HOME INSURANCE COMPANY**  
**NAIC # 10915 CDI # 4591-4**

AS OF AUGUST 31, 2002

**STATE OF CALIFORNIA**



**DEPARTMENT OF INSURANCE**  
**MARKET CONDUCT DIVISION**  
**FIELD CLAIMS BUREAU**

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**CALIFORNIA DEPARTMENT OF INSURANCE**

Consumer Services and Market Conduct Branch  
Field Claims Bureau, 11th Floor  
Ronald Reagan State Office Building  
300 South Spring Street  
Los Angeles, CA 90013



May 29, 2003

The Honorable John Garamendi  
Insurance Commissioner  
State of California  
45 Fremont Street  
San Francisco, California 94105

Honorable Commissioner:

Pursuant to instructions, and under the authority granted under Part 2, Chapter 1, Article 4, Sections 730, 733, 736, and Article 6.5, Section 790.04 of the California Insurance Code; and Title 10, Chapter 5, Subchapter 7.5, Section 2695.3(a) of the California Code of Regulations, an examination was made of the claims practices and procedures in California of:

**Kemper Auto & Home Insurance Company**  
**NAIC # 10915**

Hereinafter referred to as the Company.

This report is made available for public inspection and is published on the California Department of Insurance web site ([www.insurance.ca.gov](http://www.insurance.ca.gov)) pursuant to California Insurance Code section 12938.

## **SCOPE OF THE EXAMINATION**

The examination covered the claims handling practices of the aforementioned Company during the period September 1, 2001 through August 31, 2002. The examination was made to discover, in general, if these and other operating procedures of the Company conform with the contractual obligations in the policy forms, to provisions of the California Insurance Code (CIC), the California Code of Regulations (CCR), the California Vehicle Code (CVC) and case law. This report contains only alleged violations of Section 790.03 and Title 10, California Code of Regulations, Section 2695 et al.

To accomplish the foregoing, the examination included:

1. A review of the guidelines, procedures, training plans and forms adopted by the Company for use in California including any documentation maintained by the Company in support of positions or interpretations of fair claims settlement practices.
2. A review of the application of such guidelines, procedures, and forms, by means of an examination of claims files and related records.
3. A review of consumer complaints received by the California Department of Insurance (CDI) in the most recent year prior to the start of the examination.

The examination was conducted in the Folsom, California office of the Company.

The report is written in a “report by exception” format. The report does not present a comprehensive overview of the subject insurer’s practices. The report contains only a summary of pertinent information about the lines of business examined and details of the non-compliant or problematic activities or results that were discovered during the course of the examination along with the insurer’s proposals for correcting the deficiencies. When a violation is discovered that results in an underpayment to the claimant, the insurer corrects the underpayment and the additional amount paid is identified as a recovery in this report. All unacceptable or non-compliant activities may not have been discovered, however, and failure to identify, comment on or criticize activities does not constitute acceptance of such activities.

Any alleged violations identified in this report and any criticisms of practices have not undergone a formal administrative or judicial process.

## CLAIM SAMPLE REVIEWED AND OVERVIEW OF FINDINGS

The examiners reviewed files drawn from the category of Closed Claims for the period September 1, 2001 through August 31, 2002, commonly referred to as the “review period”. The examiners reviewed 249 claims files. The examiners cited 57 claims handling violations of the Fair Claims Settlement Practices Regulations and/or California Insurance Code Section 790.03 within the scope of this report. Further details with respect to the files reviewed and alleged violations are provided in the following tables and summaries.

<b>Kemper Auto &amp; Home Insurance Company</b>			
<b>CATEGORY</b>	<b>CLAIMS FOR REVIEW PERIOD</b>	<b>REVIEWED</b>	<b>CITATIONS</b>
Personal Auto Comprehensive	697	62	17
Personal Auto Collision	661	62	24
Personal Auto Medical Payments	27	27	2
Personal Auto Property Damage	470	60	11
Personal Auto Bodily Injury	75	36	2
Guest Passenger Bodily Injury	1	1	0
Personal Auto Uninsured Motorist Bodily Injury	1	1	1
<b>TOTALS</b>	1932	249	57

<b>TABLE OF TOTAL CITATIONS</b>		
<b>Citation</b>	<b>Description</b>	
CCR §2695.8(f)	The Company failed to supply the claimant with a copy of the estimate upon which the settlement is based.	13
CCR §2695.8(k)	The Company failed to document the basis of betterment, depreciation, or salvage. The basis for any adjustment shall be fully explained to the claimant in writing.	11
CCR §2695.8(b)(1)	The Company failed to include, in the settlement, all applicable taxes, license fees and other fees incident to the transfer of evidence of ownership of the comparable automobile; Company failed to explain in writing for the claimant the basis of the fully itemized cost of the comparable automobile	9
CCR §2695.3(a)	The Company claim file failed to contain all documents, notes, and work papers which pertain to the claim.	6
CCR §2695.4(a)	The Company failed to disclose all benefits, coverage, time limits or other provisions of the insurance policy.	5
CCR §2695.8(i)	The Company failed to provide written notification to a first party claimant as to whether the insurer intends to pursue subrogation.	5
CCR §2695.7(h)	The Company, upon acceptance of the claim, failed to tender payment within thirty calendar days.	2
CCR 2695.3(b)(2)	The Company failed to record in the file the date the Company received, date(s) the Company processed and date the Company transmitted or mailed every relevant document in the file.	2
CCR §2695.5(e)(2)	The Company failed to provide necessary forms, instructions and reasonable assistance within fifteen calendar days.	2
CCR §2695.7(b)	The Company failed, upon receiving proof of claim, to accept or deny the claim within forty calendar days.	1
CCR §2695.7(c)(1)	The Company failed to provide written notice of the need for additional time every thirty-calendar days.	1
<b>Total Citations</b>		<b>57</b>

## **SUMMARY OF CRITICISMS, INSURER COMPLIANCE ACTIONS AND TOTAL RECOVERIES**

The following is a brief summary of the criticisms that were developed during the course of this examination related to the violations alleged in this report. This report contains only alleged violations of Section 790.03 and Title 10, California Code of Regulations, Section 2695 et al. In response to each criticism, the Company is required to identify remedial or corrective action that has been or will be taken to correct the deficiency. Regardless of the remedial actions taken or proposed by the Company, it is the Company's obligation to ensure that compliance is achieved. The total money recovered was \$43.05 within the scope of this report.

**1. The Company failed to supply the claimant with a copy of the estimate upon which the settlement is based.** In 13 instances, the company failed to provide copies of estimates to claimants. The Department alleges these acts are in violation of CCR §2695.8(f).

**Summary of Company Response:** The Company has acknowledged these violations and has indicated they were mistakes or oversights by claims handlers in opposition to established Company policies and procedures. Staff retraining will be undertaken in an effort to prevent future violations.

**2. The Company failed to document the basis of betterment, depreciation, or salvage. The basis for any adjustment shall be fully explained to the claimant in writing.** In 11 instances, the Company failed to document the basis of betterment, depreciation, or salvage. The basis for any adjustment shall be fully explained to the claimant in writing. The Department alleges these acts are in violation of CCR §2695.8(k).

**Summary of Company Response:** The Company has acknowledged these violations and has indicated they were mistakes or oversights by claims handlers in opposition to established Company policies and procedures. Staff retraining will be undertaken in an effort to prevent future violations.

**3. The Company failed to include, in the settlement, all applicable taxes, license fees and other fees incident to transfer of evidence of ownership of the comparable automobile; the Company failed to explain in writing for the claimant the basis of the fully itemized cost of the comparable automobile;** In nine instances, the Company either failed to explain in writing for the claimant the basis of the fully itemized cost of the comparable automobile or the Company failed to include in the settlement license fees and other fees incident to the transfer of evidence of ownership of a comparable vehicle. The Department alleges these acts are in violation of CCR §2695.8(b)(1).

**Summary of Company Response:** The Company has acknowledged there were six instances where a written explanation of the settlement was not provided to the claimant and three instances where the Company failed to include all applicable fees. The Company has acknowledged these violations and has indicated they were mistakes or oversights by claims handlers in opposition to established Company policies and procedures. Staff retraining will be undertaken in an effort to prevent future violations.

**4. The Company's claim file failed to contain all documents, notes and work papers which pertain to the claim.**

In six instances, the Company's file(s) failed to contain all documents, notes and work papers. The Department alleges these acts are in violation of CCR §2695.3(a).

**Summary of Company Response:** The Company has acknowledged these violations and has indicated they were mistakes or oversights by claims handlers in opposition to established Company policies and procedures. Staff retraining will be undertaken in an effort to prevent future violations.

Since several of the errors concerned claim files that lacked evidence of dates of inspection of involved automobiles, the Company has agreed to amend its auto appraisal forms to include date of inspection.

**5. The Company failed to disclose all benefits, coverage, time limits or other provisions of the insurance policy; the Company failed to provide written notification to a first party claimant as to whether the insurer intends to pursue subrogation.**

In five instances each, the Company failed to explain benefits or failed to notify its insured of its subrogation intentions. The Department alleges these acts are in violation of CCR §2695.4(a) and CCR §2695.8(i), respectively.

**Summary of Company Response:** The Company has acknowledged these violations and has indicated they were mistakes or oversights by claims handlers in opposition to established Company policies and procedures. Staff retraining will be undertaken in an effort to prevent future violations.

**6. The Company, upon acceptance of the claim, failed to tender payment within thirty calendar days.**

In two instances, upon acceptance of the claim the Company failed to tender payment within thirty calendar days. The Department alleges these acts are in violation of CCR §2695.7(h)

**Summary of Company Response:** The Company has acknowledged these violations and has indicated they were mistakes or oversights by claims handlers in opposition to established Company policies and procedures. Staff retraining will be undertaken in an effort to prevent future violations

**7. The Company failed to comply with the Fair Claims Regulations Practices.** In two instances each, the Company failed to comply with the following Fair Claims Regulations Practices: CCR §2695.3(b)(2) and CCR §2695.5(e)(2).

**Summary of Company Response:** The Company has acknowledged these violations and has indicated they were mistakes or oversights by claims handlers in opposition to established Company policies and procedures. Staff retraining will be undertaken in an effort to prevent future violations



8. **The Company failed, upon receiving proof of claim, to accept or deny the claim within forty calendar days; the Company failed to provide written notice of the need for additional time every thirty calendar days.**

In one instance each the Company failed to comply with these Fair Claim Regulation Practices. The Department alleges these acts are in violation of CCR §2695.7(b) and CCR §2695.7(c)(1), respectively.

**Summary of Company Response:** The Company has acknowledged these violations and has indicated they were mistakes or oversights by claims handlers in opposition to established Company policies and procedures. Staff retraining will be undertaken in an effort to prevent future violations